

SENATE JOURNAL 10
COMMITTEE NO.
DATE 3/21/13
SB 387

Proposed amendments to Senate Bill 387 – Sen. Barrett

1. Amendment One:

The title of the bill is amended to read:

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATED TO THE ENFORCEMENT OF CAMPAIGN PRACTICES LAWS; REQUIRING THE POLITICAL PRACTICES COMMISSION TO CONDUCT ADMINISTRATIVE CONTESTED CASE HEARINGS CONCERNING CAMPAIGN PRACTICE VIOLATIONS; REVISING THE COMMISSIONER OF POLITICAL PRACTICES'S AUTHORITY, DUTIES, APPOINTMENT, TERM OF OFFICE, SALARY DETERMINATION, AND QUALIFICATIONS; CONFORMING PROVISIONS ON CORPORATE CONTRIBUTIONS TO CASE LAW; PROVIDING NOTIFICATION REQUIREMENTS; REVISING PENALTIES; PROVIDING THAT COUNTY ATTORNEYS MAY PROSECUTE ONLY CRIMINAL VIOLATIONS OF CAMPAIGN PRACTICE LAWS; REQUIRING THAT AN ALLEGED CRIMINAL VIOLATION BY A COUNTY ATTORNEY BE REFERRED TO THE ATTORNEY GENERAL; ADDING A STANDING REQUIREMENT FOR THE FILING OF ETHICS COMPLAINTS; AMENDING SECTIONS 13-35-226, 13-35-227, 13-35-403, 13-37-101, 13-37-102, 13-37-103, 13-37-104, 13-37-106, 13-37-107, 13-37-111, 13-37-113, 13-37-121, 13-37-124, 13-37-130, 13-37-131, AND 13-37-210, MCA; REPEALING SECTIONS 13-37-122, 13-37-128, 2-2-136, AND 13-37-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2. Amendment Two:

NEW SECTION-- x. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices if the person has standing to file the complaint. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, the person who has filed the complaint has not demonstrated that he or she has standing to file the complaint, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no

additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(d) for purposes of this part, a person has standing to allege a violation, when the person:

(i). clearly alleges a past, present, or threatened injury to a property or civil right; and

(ii) alleges an injury that is distinguishable from the injury to the public generally, although the injury does not need to be exclusive to the person alleging the injury.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."